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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Jacques Soux

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YOUNG & THOMPSON

209 Madison Street

Suite 500

ALEXANDRIA, VA 22314

EXAMINER

BARTOSIK, ANTHONY N

ART UNIT

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/534,021	Applicant(s) SOUX, JACQUES	
	Examiner ANTHONY N. BARTOSIK	Art Unit 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>05/05/2005</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Specification

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
- (f) BACKGROUND OF THE INVENTION.
 - (1) Field of the Invention.
 - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (j) CLAIM OR CLAIMS (commencing on a separate sheet).
- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

Claim Objections

2. Claim 1 recites the limitation "Block." There is insufficient antecedent basis for this limitation in the claim.
3. Claims 9, 17 and 19 recite the limitation "splined tongue." There is insufficient antecedent basis for this limitation in the claim.
4. Claim 14 recites the limitation "the leveling course." There is insufficient antecedent basis for this limitation in the claim.
5. Claim 17 recites the limitation "the screw or metal tips." There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
7. Claims 1-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 sets forth, both an apparatus and method steps of using the apparatus, which renders the claim indefinite. See MPEP 2173.05(p)(II).
8. Claim 2 contains the language "variable thickness," which is indefinite as it is not clear what is intended by the above mentioned limitation.

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9. Claim 11 is indefinite and contains "the wall facing" which does not have proper antecedent making the claim unclear.

10. Claim 20 is indefinite.

11. Regarding claims 10, 11, and 17, the phrase "should not" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claim Rejections - 35 USC § 102

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

13. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Strey et al. (DE 19835241).

14. In Re claim 1, Figure 1 of Strey et al. discloses a block made of solid wood or pressboard characterized by its profile and the method of its implementation during the construction of a solid wall by staggered stacking.

Claim Rejections - 35 USC § 103

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. Claims 2-8 rejected under 35 U.S.C. 103(a) as being unpatentable over Strey et al. (DE 19835241).

17. In Re claims 2, 3, 6, 7, 8, and 11, Strey et al. discloses the claimed invention but does not disclose the specific dimensions of the claims. Applicant has failed to establish a criticality for the explicitly claimed dimensions. In *Gardner v. TEC Systems, Inc.*, the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device. *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984) (citing MPEP 2144.04(IV)). From the above reasoning, it would have been an obvious design choice to dimension Strey et al. as specified in the claims.

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18. In Re claim 4, Figure 1 of Strey et al. discloses an ordinary tongue and groove joint with double flanges (2) on the upper face of the block and double grooves (3) on its lower face.

19. In Re claim 5, Figure 1 of Strey et al. discloses a longitudinal axis of the flanges (2) on the upper face and longitudinal axis of the grooves (3) on the lower face, facing each other two by two on same vertical axis.

20. In Re claim 6, Figure 1 of Strey et al. discloses the claimed invention except for the particular shape of the grooves and flanges. The Court in, *In re Dailey* held that changes in shape is a matter of design choice which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular shape of the claimed container was significant. *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (citing MPEP 2144.04(IV)). Here the shape of semi-circle presents no significant change and would therefore be obvious.

21. Claims 9-11 and 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Strey et al. (DE 19835241) in view of Montanelli (DE 2739017).

22. In Re claim 9, Strey et al. teaches the claimed invention except for the spline on the end walls. Figure 11 of Montanelli teaches the use of splines (20) in grooves (16) to join wood blocks end to end. It would have been obvious to one skilled in the art at the

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time of the invention to include the splines and grooves as taught by Montanelli with the block of Strey et al. in order to further strengthen the connection between the blocks.

23. In Re claim 10, Montanelli discloses one or more splined tongue and groove joints according to the size of the block; the scraped area that is caused by the groove or grooves of the assembly should not exceed one third of the surface area of its square section of the block.

24. In Re claim 11, Montanelli discloses the groove depth that should not exceed the distance between the wall facing and first line (9) of the groove.

25. In Re claim 19, the combination of claim 9 teaches the claimed invention but does not disclose the specific dimensions of claim 19. Applicant has failed to establish a criticality for the explicitly claimed dimensions. In *Gardner v. TEC Systems, Inc.*, the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device. *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984) (citing MPEP 2144.04(IV)). From the above reasoning, it would have been an obvious design choice to dimension Strey et al. as specified in this claim.

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26. In Re claims 20 and 21, the language of claims 20 and 21 is considered product-by-process. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. See MPEP 2113 and 2173.05(p).

27. Claims 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Strey et al. (DE 19835241) in view of Rolle (US 3,343,328).

28. In Re claim 12, Strey et al. teaches the claimed invention except for the countersunk holes. Figure 2 of Rolle teaches the use of countersunk holes (54) for a mounting the blocks to one another. It would have been obvious to one skilled in the art at the time of the invention to include the countersunk holes as taught by Rolle with the block of Strey et al. in order to attach the blocks together.

29. In Re claim 13, Rolle discloses the holes passing through the block up to its lower portion and that are located on the same axis that is parallel to the flanges and between the latter.

30. In Re claim 14, the combination of Strey et al. and Rolle teaches the claimed invention but does not disclose the specific dimensions of claim 14. Applicant has failed to establish a criticality for the explicitly claimed dimensions. In *Gardner v. TEC*

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Systems, Inc., the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device. *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984) (citing MPEP 2144.04(IV)). From the above reasoning, it would have been an obvious design choice to dimension the combination as specified in this claim.

31. Claims 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Strey et al. (DE 19835241) and Rolle (US 3,343,328) as applied to claims 12-14 above, and further in view of Montanelli (DE 2739017).

32. In Re claim 15, the combination of Strey et al. and Rolle teaches the claimed invention except for the splines. Figure 11 of Montanelli teaches the use of splines (20) in grooves (16) to join wood blocks end to end. It would have been obvious to one skilled in the art at the time of the invention to include the splines and grooves as taught by Montanelli with the block of Strey et al. in order to further strengthen the connection between the blocks and place the splines in the same longitudinal axis.

33. In Re claim 16, Rolle discloses the symmetry of these holes (54) to the two ends of the block.

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34. In Re claims 17, the combination of claim 15 teaches the claimed invention but does not disclose the specific dimensions of claim 17. Applicant has failed to establish a criticality for the explicitly claimed dimensions. In *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984), the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device. MPEP 2144.04(IV). From the above reasoning, it would have been an obvious design choice to dimension the combination as specified in this claim.

35. In Re claim 18, language of claim 18 is considered product-by-process. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. See MPEP 2113 and 2173.05(p).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANTHONY N. BARTOSIK whose telephone number is (571)270-3112. The examiner can normally be reached on M-F 7:30-5:00; E.D.T.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Richard E. Chilcot, Jr./
Supervisory Patent Examiner, Art Unit 3635

/A. N. B./
Examiner, Art Unit 3635